IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL O.P.No.24949 OF 2007

M.Shankar ... Petitioner

-vs-

1.State of Tamil Nadu,
rep.by District Crime Branch,
Dharmapuri District
at Dharmapuri.

2.Chakravarthi ... Respondents

Petition under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.N.S.Sivakumar
For respondent 1 : Mr.A.Saravanan,
Government Advocate (Crl.Side).

O R D E R

This petition has been filed for a direction to the first respondent to conduct re-investigation in Crime No.4 of 2003 in C.C.No.263 of 2003 on the file of Judicial Magistrate No.2, Dharmapuri, and file a final report in accordance with law.

2. The case of the petitioner is that he is the grandson of one Venkatachala Chetty, who gave a representation, dated 03.03.2003, to the District Collector, Dharmapuri, stating that the second respondent/accused promised to secure a job to the petitioner in Kalpakkam Thermal Power Station and collected a sum of Rs.1,00,000/- and he also fabricated the documents as if the Tamil Nadu Electricity Board has given appointment order to the Employees Union; the accused also hoodwinked one Pachiappan and collected a sum of Rs.1,00,000/- from his father; the District Collector forwarded the said representation to the Superintendent of Police, Dharmapuri, who, in turn, directed the District Crime Branch, Dharmapuri, to register a case against the second respondent, which resulted in registration of Crime No.4 of 2003 in C.C.No.263 of 2003, for the offences under Sections 420 and 468 read with 471 IPC (2 counts);

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charge sheet was laid on 30.04.2003 and the trial was completed by examination of the witnesses and the case is pending before the Judicial Magistrate, Dharmapuri.

3. The main grievance of the petitioner is that the investigation was slipshod, as transpired from the oral account of the investigating officer, namely, P.W.6 before the said Court, who was serving as Inspector of Police and has retired by now.

4. Learned counsel for the petitioner very much relies upon the testimony of the investigating officer, wherein, in cross-examination, according to the petitioner, there is a lapse on the part of the investigating officer to investigate the case in a proper manner. It is also submitted by the learned counsel that the Inspector, though is vested with sufficient powers to examine necessary witnesses by summoning them and enter into any place and get the leads, had woefully failed to do so, which resulted in failure on the part of the prosecution to place all the cards before the Court. In the cross-examination, the said Inspector of Police deposed that while he was examining Senthil Kumar and Sankar, P.W.4, (petitioner herein), they informed him that they were staying in a lodge at Chennai; he had not examined the persons, who were managing the lodge; he had not enquired them since they had given bogus address and stayed there; it was not reflected in the statement recorded under Section 161 Cr.P.C; he went to Kalpakkam Thermal Power Station and enquired the Watchman and other persons, but, they refused entry and that he had not issued summons to any officials in Kalpakkam Thermal Power Station.

5. Learned counsel for the petitioner states that failure on the part of the investigating officer to examine the custodians of the lodge and the authorities in Kalpakkam Thermal Power Station is a serious lapse.

6. This Court could not now focus its attention for appreciation of oral evidence on record and render any finding thereon. If the petitioner is aggrieved, he may request his grandfather, namely, de facto complainant to take steps to assist the prosecution before the trial Court and it is for the said Court to entertain the said request, if it is made. If any lacuna appears in any part of oral evidence, there cannot not be any direction for further investigation or re-investigation in the matter, in order to fill up the same, which may prejudice the rights of the accused. Further, any aggrieved person may raise against the oral evidence tendered by the official witnesses or an investigating officer before a criminal Court, if he finds anything adverse to him that got entry in the record. If any requests for further investigation or re-investigation are entertained, there would be no end at all and the cases would not see their quietus.

7. Learned counsel for the petitioner relies upon a decision of the Hon'ble Supreme Court in Union Public Service Commission v. S.Papaiah and Others, 1997 (7) Supreme Court Cases 614, which was rendered with

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regard to Section 173 Cr.P.C. The operative portion of the said judgment goes thus :

> "12. The appellant had communicated to the Director, CBI, certain defects in the investigation on 23-1-1995 and had pointed out as many as six shortcomings necessitating reinvestigation but the CBI did not bring that fact to the notice of the V Metropolitan Magistrate while submitting the final report on 24-2-1995 before the Magistrate decided to accept the final report submitted by the CBI and closed the file on 16-3-1995. It was, to say the least, improper on the part of the investigating officer of the CBI to have withheld a vital document dated 23-1-1995, addressed to the Director, CBI which communication in our view was in the nature of a "protest petition", from the learned Magistrate while resubmitting the report on 24-2-1995. In all fairness, the investigating agency should have brought that communication to the notice of the learned Metropolitan Magistrate before resubmitting the final report for its acceptance...."

8. The position of law is well settled under Section 173 (8) Cr.P.C., which provides that if anything was brought to the knowledge of the officer in charge of the police station or if he obtains further evidence oral or documentary, he shall forward the same to the Magistrate and prefer a further report. It is not the case here. In this case, the investigating officer did not get any further lead in the investigation after laying charge sheet and only during the cross-examination, he came out with certain circumstances, in which he was precluded from proceeding further, which is not at all a further information obtained by him at the time of investigation or after laying of the charge sheet. There is no such request before the Judicial Magistrate, in this regard.

9. Under the above circumstances, the prayer sought for in this petition cannot be countenanced and the petitioner, who has no locus standi, has to be non-suited. Hence, this petition is dismissed. Consequently, the connected Criminal M.P.No.1 is also dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The District Crime Branch,
Dharmapuri District,
Dharmapuri.

2. The Judicial Magistrate No.II,
Dharmapuri.

3. -do-thro' Chief Judicial Magistrate
Dharmapuri.

4. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.M.Sathyanarayanan, Advocate, SR.56854.

CRL.O.P.No.24949 OF 2007

TEJ(CO)
RVL 25.09.2007

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